

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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-----In the Matter of-----)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding To)
Consider the Energy Independence)
and Security Act of 2007 Standards.)
_____)

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII
DOCKET NO. 2009-0029

ORDER INITIATING INVESTIGATION

FILED
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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)	
PUBLIC UTILITIES COMMISSION)	Docket No. 2009-0029
Instituting a Proceeding To)	
Consider the Energy Independence)	
and Security Act of 2007 Standards.)	
_____)	

ORDER INITIATING INVESTIGATION

By this Order, the commission initiates an investigation to consider four new federal standards, as required by the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Independence and Security Act of 2007, Public Law No. 110-140 (December 19, 2007) ("EISA").

I.

Background

On December 19, 2007, the President signed the EISA, which adds four new federal standards to PURPA for state commissions to consider and make a determination as to whether or not it is appropriate to implement such standards.¹ In pertinent part, the additional standards are as follows:

- (16) Integrated Resource Planning - Each electric utility shall--
 - (A) integrate energy efficiency resources into utility, State, and regional plans; and

¹16 U.S.C. § 2621(d).

- (B) adopt policies establishing cost-effective energy efficiency as a priority resource.
- (17) Rate Design Modifications to Promote Energy Efficiency Investments-
- (A) In General - The rates allowed to be charged by any electric utility shall -
 - (i) align utility incentives with the delivery of cost-effective energy efficiency; and
 - (ii) promote energy efficiency investments.
 - (B) Policy Options - In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider-
 - (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
 - (ii) providing utility incentives for the successful management of energy efficiency programs;
 - (iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
 - (iv) adopting rate designs that encourage energy efficiency for each customer class;
 - (v) allowing timely recovery of energy efficiency-related costs; and
 - (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making

home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

(16)² Consideration of Smart Grid Investments -

- (A) In General - Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including-
 - (i) total costs;
 - (ii) cost-effectiveness;
 - (iii) improved reliability;
 - (iv) security;
 - (v) system performance; and
 - (vi) societal benefit.
- (B) Rate Recovery - Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.
- (C) Obsolete Equipment - Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to

²So in original; two paragraphs numbered (16).

recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

(17)³ Smart Grid Information -

- (A) Standard - All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).
- (B) Information - Information provided under this section, to the extent practicable, shall include:
 - (i) Prices - Purchasers and other interested persons shall be provided with information on-
 - (I) time-based electricity prices in the wholesale electricity market; and
 - (II) time-based electricity retail prices or rates that is available to the purchasers.
 - (ii) Usage - Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
 - (iii) Intervals and Projections - Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

³So in original; two paragraphs numbered (17).

(iv) Sources - Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including green-house gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) Access - Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

16 U.S.C. § 2621(d).

Under PURPA, the commission is required to consider whether or not it is appropriate to implement any of the four new federal standards described above. 16 U.S.C. § 2621 states:

(a) Consideration and Determination Respecting Certain Ratemaking Standards - Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) [of this section] and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. . . . Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Procedural Requirements for Consideration and Determination

(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be—

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

16 U.S.C. § 2621.

II.

Discussion

A.

Commission Authority

Hawaii Revised Statutes ("HRS") § 269-7 states, in relevant part:

(a) The public utilities commission and each commissioner shall have the power to examine the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all

applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations . . .

.

- (c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.

HRS § 269-7(a) and (c) (emphasis added). Similarly, in HRS § 269-6, the commission is vested with "general supervision . . . over all public utilities."⁴

In addition, as noted above, PURPA requires the commission to consider the new federal standards.

B.

Named Parties

Since all regulated electric utilities in the State will likely be impacted by the outcome of this investigation, the commission, sua sponte, names as parties to this proceeding:

⁴Commission investigatory authority is also set forth in HRS § 269-15 and Hawaii Administrative Rules ("HAR") § 6-61-71.

(1) HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"),⁵ (2) HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"),⁶ (3) MAUI ELECTRIC COMPANY, LTD. ("MECO")⁷ (collectively, the "HECO Companies"), (4) KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"),⁸ and (5) the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")⁹ (collectively, "Parties"). Their involvement and participation in this proceeding will assist the commission in developing a sound record for its investigation.

⁵HECO is a Hawaii corporation and a public utility as defined by Hawaii Revised Statutes ("HRS") § 269-1. HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii ("State").

⁶HELCO is a Hawaii corporation and a public utility as defined by HRS § 269-1. HELCO was initially organized under the laws of the Republic of Hawaii on or about December 5, 1894. HELCO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii in the State.

⁷MECO is a Hawaii corporation and a public utility as defined by HRS § 269-1. MECO was initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai, and the production, transmission, distribution, and sale of electricity on the island of Lanai.

⁸KIUC is a Hawaii not-for-profit electric cooperative engaged in the production, transmission, distribution, purchase, and sale of electric energy on the island of Kauai. While KIUC is not statutorily covered by PURPA, it is a provider of electric utility service in the State.

⁹The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an ex officio party to any proceeding before the commission. See HRS § 269-51; Hawaii Administrative Rules § 6-61-62.

C.

Procedural Matters

Any interested individual, entity, agency, or community or business organization may file a motion to intervene or participate without intervention in this docket. Motions to intervene or participate without intervention must comply with all applicable rules of HAR Chapter 6-61. Any individual, entity, agency, or community or business organization allowed to intervene or participate without intervention in this proceeding will not be allowed to broaden the issues or unduly delay the proceeding.

If a protective order to govern the treatment of certain documents is desired, the Parties (and intervenors and participants, if any) shall file a stipulated protective order for the commission's review and approval within forty-five days of the date of this Order. If the Parties (and intervenors and participants, if any) are unable to stipulate, each party or participant shall file proposed protective orders for the commission's review and consideration within the forty-five day filing deadline.

Each Party is directed to provide a statement describing its position, if any, on whether the commission should adopt, modify, or decline to adopt in whole or part, the standards articulated above, as well as procedural comments and suggestions as to how these issues should be considered in this

docket or in a separate proceeding. Position statements should be filed in this docket within ninety days of the filing of this Order.

III.

Orders

THE COMMISSION ORDERS:

1. An investigative proceeding is initiated to consider the federal standards established by the EISA of 2007.

2. The HECO Companies, KIUC, and the Consumer Advocate are parties to this investigative docket.

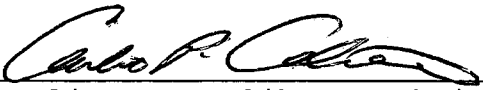
3. A motion to intervene or participate without intervention must be filed not later than twenty days from the date of this Order, pursuant to HAR § 6-61-57(3)(B). Motions to intervene or participate without intervention must comply with HAR Chapter 6-61, Rules of Practice and Procedure Before the Public Utilities Commission.

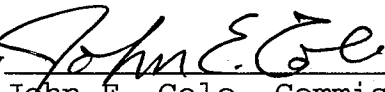
4. If a protective order to govern the treatment of certain documents is desired, the Parties (and intervenors and participants, if any) shall file a stipulated protective order for the commission's review and approval within forty-five days of the date of this Order. If they are unable to stipulate, each party, (intervenor or participant, if any) shall file a proposed protective order for the commission's review and consideration within the same deadline.

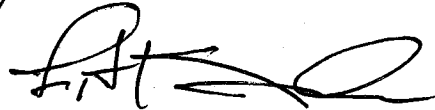
5. Each party shall submit to the commission a statement describing its position, if any, on whether the commission should adopt, modify, or decline to adopt in whole or part, the standards articulated above, as well as procedural comments and suggestions as to how these issues should be considered in this docket or in a separate proceeding within ninety days of the filing of this Order.

DONE at Honolulu, Hawaii FEB 11 2009.

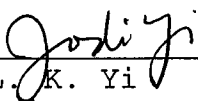
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2009-0029.iaa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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